

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION.

Defendant.

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Civil Acton No. 02-2917 (JEI)

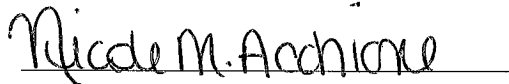
**DECLARATION OF NICOLE M.
ACCHIONE**

I, Nicole M. Acchione, declare under penalty of perjury as follows:

1. I am an attorney-at-law with the firm of Trujillo Rodriguez & Richards, LLC, and I submit this declaration upon personal knowledge in support of Plaintiffs' Motion for Sanctions Pursuant to Rule 11.
2. Attached as Exhibit A are true and correct copies of excerpts from the depositions of Clay Warner, Michael Glanzer, and Steve Tumblin.
3. Attached as Exhibit B is a true and correct copy of the Certification of Service reflecting service of Plaintiffs' Motion for Sanctions upon counsel for Defendant, as required by Rule 11 (c)(2), on August 16, 2011.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND ACCURATE.

September 6, 2011



Nicole M. Acchione

EXHIBIT A

In The Matter Of:
Bensel v.
Air Line Pilots Association

CLAY WARNER
Vol. 1
September 16, 2008

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CLAY WARNER - Vol. 1
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<p style="text-align: right;">Page 17</p> <p>1 Q Okay. They went on strike after the 1113 2 motion was filed? 3 MR. KATZ: Objection, lack of foundation. 4 THE WITNESS: I don't think so. 5 BY MR. PRESS: 6 Q What? 7 A I don't think so. 8 Q Well, who filed an 1113 motion and what did 9 it request in that case? 10 MR. KATZ: I'm going to object to this 11 whole line of questioning. There's no foundation that 12 this Witness would be aware of that. 13 BY MR. PRESS: 14 Q Well, Mr. Warner, do you have any knowledge 15 of the 1113 motion that was filed in that Court and how 16 it was responded to resolved or -- other than the fact 17 it was filed can you tell me anything about it? 18 A Twenty-one -- no, 19 years ago. No, I 19 can't tell you much about it. 20 Q All right. 21 MR. KATZ: Why don't you ask Mr. Seltzer. 22 His deposition is later this week. 23 MR. PRESS: I understand that. 24 BY MR. PRESS:</p>	<p style="text-align: right;">Page 19</p> <p>1 Q I am asking. Yes. 2 A Well, if that was your question I didn't 3 hear that question. Do you want to ask me that 4 question? 5 Q You gave advice to the TWA MEC regarding 6 the section 1113 motion that the TWA pilots were 7 facing -- 8 A No. 9 Q -- correct? 10 A That's not correct. 11 Q You didn't given any advice? 12 A I did not. 13 Q Okay. That's because you weren't qualified 14 to give such advice, right? 15 A It was because Mr. Seltzer was available. 16 And as I had previously testified, he was -- had more 17 experience in this area than almost anybody else in the 18 country. 19 Q So it's your testimony -- well, first of 20 all, let's get some foundation. You remember being 21 present at a TWA MEC meeting on April 2nd, 2001, in 22 St. Louis, correct? 23 A Can you give me the subject matter that was 24 discussed as opposed to the time? I just want to make</p>
<p style="text-align: right;">Page 18</p> <p>1 Q And sitting here today the Eastern 2 bankruptcy is the only bankruptcy you can recall that 3 you had any involvement with in which there was an 1113 4 motion at issue? 5 MR. KATZ: I object, mischaracterizes the 6 record. 7 BY MR. PRESS: 8 Q Well, sitting here today your best 9 testimony. 10 A I said sitting here this minute that's the 11 one that I can come up with but I know there were 12 others. So -- and if -- well, let it go at that. 13 Q You know there were others but you can't 14 name them for me? 15 A At this moment that is correct. 16 Q And you came here today anticipating I 17 would ask you questions about your prior section 1113 18 experience, didn't you? 19 A No. 20 Q You were advising the TWA MEC on how to 21 deal with an 1113 motion. That's one of the issues in 22 this case, right? 23 A Did you ask me whether I was advising the 24 TWA MEC about 1113?</p>	<p style="text-align: right;">Page 20</p> <p>1 sure I'm at the right meeting. 2 Q The subject matter would have been ALPA's 3 request that the TWA MEC waive its scope provisions. 4 A ALPA never requested that the TWA MEC waive 5 its scope provisions. 6 Q So you were never at such a meeting? 7 A Well, that never happened. 8 Q You remember an April 2nd, 2001, meeting in 9 St. Louis, Mr. Warner? 10 A What was the subject matter being discussed 11 by the TWA MEC and I can tell you whether or not I 12 remember it? 13 Q Some resolution to waive its scope. 14 A That I remember. Yes, I was there. 15 Q Right. 16 And you were there that day? 17 A That is correct. 18 Q And you gave advice to the TWA MEC that 19 day? 20 A Yes, I did. 21 Q And your advice was that they should waive 22 their scope, right? 23 A My advice and my recommendation were to 24 list alternatives and the results from those</p>

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<p style="text-align: right;">Page 21</p> <p>1 alternatives. 1113 played into the alternatives but 2 the advice with respect to 1113 came from Mr. Seltzer. 3 Q Your advice ultimately to the MEC that day 4 was that they should waive scope, right? 5 MR. KATZ: I'm going to object. That was 6 asked and answered. The Witness said he listed 7 alternatives and gave the likely consequences of those 8 alternatives. 9 BY MR. PRESS: 10 Q You had no recommendation that day? 11 A My role and my discussion with the MEC was 12 to go down alternatives, following paths, summarizing 13 the advice that they were getting from their other 14 advisors, and pointing out the results of various 15 alternatives. 16 Q Point out what? 17 MR. KATZ: The results of various 18 alternatives. 19 BY MR. PRESS: 20 Q Who invited you to that meeting? 21 A I do not recall. 22 Q You can state definitively you know it 23 wasn't a TWA pilot that invited you, right? 24 A Of course not. Why would I state that</p>	<p style="text-align: right;">Page 23</p> <p>1 have a recollection of that conversation. 2 Q All right. And that's as most as you can 3 say about how you got invited? 4 A Yep. That's it. 5 Q Now, the alternatives that you presented to 6 the MEC that day, Mr. Warner, can you recall what they 7 were? 8 A The issue presented to the MEC for decision 9 was whether or not -- well, let me step back. There 10 was a whole series of negotiating issues being 11 presented to the MEC in the form of a proposed 12 agreement with TWA-LLC. The details of those proposals 13 were discussed by the negotiating chairman Ron Kiel and 14 Mr. Holtzman, not me. And there were decisions to be 15 made there. I was involved in that. 16 The decisions that I was involved -- the 17 decision that I was involved with was whether or not 18 the MEC should agree to waive section one of its 19 collective bargaining agreement and associated 20 provisions that had been identified by TWA previously. 21 Q And the shorthand phrase for the provisions 22 in section one what would that be, if there is one? I 23 was talking about waiving scope. Isn't that what you 24 are talking about?</p>
<p style="text-align: right;">Page 22</p> <p>1 definitively? 2 Q No. Of course not it wasn't the TWA MEC 3 that invited you. 4 A Well, that would be far and away the most 5 likely source of the invitation, but I don't recall. 6 Q Right. Okay. 7 Which is to say you can't refute the 8 testimony of anybody on the MEC who would say that you 9 were not invited by them? 10 MR. KATZ: I'm going to object. You are 11 just arguing with the Witness. He's answered the 12 question. 13 BY MR. PRESS: 14 Q I want to know if you are going to come 15 into Court and testify that Bob Pastore or somebody 16 else associated with the MEC invited me to that 17 meeting. Can you testify to that or not? 18 A Staff members appear at MEC meetings and I 19 had previously appeared at TWA MEC meetings on other 20 issues at the invitation generally of one of the 21 officers of the MEC who would have been billed for my 22 expenses for attending. 23 So it is very likely that one of the 24 officers of the MEC invited me to attend, but I don't</p>	<p style="text-align: right;">Page 24</p> <p>1 A Yes. There was more than that. I mean, 2 there were other benefits provisions and things that 3 also had to be changed, but it -- but there was a 4 discussion. They did shorthand it as waiving scope. 5 Q Okay. So how was the issue presented then 6 as to that proposed waiver? 7 A Present at that meeting in the form of 8 advisors were TWA MEC's corporate and bankruptcy 9 counsel Steve Tumblin which the MEC retained. There's 10 also the MEC's labor advisor Randy Babbitt that the MEC 11 obtained -- retained. There was, from the 12 representation department, Mr. Holtzman and 13 Mr. Roberts, Bill Roberts. I was there. The MEC's 14 investment banker Michael Glanzer was there and the 15 MEC's merger counsel Roland Wilder was there. 16 So there was a lot of presentation and a 17 lot of talking and a lot of discussing and a lot of 18 framing issues. There may have been other people 19 there, but that's what I recall right now. 20 Q And the issue that you talked about was 21 whether or not the MEC should waive section one of its 22 collective bargaining agreement? 23 A That's the issue they were presented with 24 and I helped to try -- I hoped to try to help them</p>

In The Matter Of:

*Bensel v.
Air Line Pilots Association*

MICHAEL GLANZER

Vol. I

September 18, 2008

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<p style="text-align: right;">Page 85</p> <p>1 A. Uh-huh.</p> <p>2 Q. Is this a document that you think you</p> <p>3 probably received in the scope of your engagement</p> <p>4 with the TWA MEC?</p> <p>5 A. Probably.</p> <p>6 Q. If you go to -- there's document numbers</p> <p>7 at the bottom of the pages --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- ALPA, if you go to 53130.</p> <p>10 A. Okay.</p> <p>11 Q. It talks about American's agreement with</p> <p>12 United as part of this American/TWA deal.</p> <p>13 A. Uh-huh.</p> <p>14 Q. And it says in the second bullet point,</p> <p>15 "Subject to the APA's consent, American will make</p> <p>16 offers to 500 US Airways B757 captains and first</p> <p>17 officers, and integrate them subject to Allegheny</p> <p>18 Mohawk labor provisions."</p> <p>19 You recognize the reference to APA is to</p> <p>20 the American Airline Pilots Union?</p> <p>21 A. Yes.</p> <p>22 Q. And this was -- this notion of some 500</p> <p>23 U.S. Airway pilots being integrated under the</p> <p>24 Allegheny Mohawk provisions, that was something that</p> <p>25 you knew about at the time. Right?</p>	<p style="text-align: right;">Page 87</p> <p>1 particular. So...</p> <p>2 Q. Well, your firm was working with the US</p> <p>3 Airways MEC at the time.</p> <p>4 A. It was.</p> <p>5 Q. And had been for years.</p> <p>6 A. That is true.</p> <p>7 Q. And you were aware that the US Airways</p> <p>8 MEC filed a grievance as a result of this part of the</p> <p>9 transaction that we're looking at right here.</p> <p>10 MR. AMINI: Objection.</p> <p>11 A. I -- they may have. I don't know that.</p> <p>12 It was asked as the deal that I would have focused</p> <p>13 on.</p> <p>14 Q. That wasn't --</p> <p>15 A. No.</p> <p>16 Q. -- something you knew at the time?</p> <p>17 A. I may have, but my charge is on</p> <p>18 financial matters, not prospective seniority</p> <p>19 integration issues.</p> <p>20 Q. With the US Air pilots?</p> <p>21 A. With the US Air pilots.</p> <p>22 Q. So are you aware of how that grievance</p> <p>23 was resolved?</p> <p>24 A. No.</p> <p>25 Q. No?</p>
<p style="text-align: right;">Page 86</p> <p>1 A. I may have. I don't know with certainty</p> <p>2 that I did, but possibly.</p> <p>3 Q. And you know for a fact that that was</p> <p>4 something that ALPA insisted upon for the US Airways</p> <p>5 pilots. Right?</p> <p>6 A. No, I do not know that.</p> <p>7 Q. Weren't you personally involved in those</p> <p>8 negotiations, sir?</p> <p>9 A. Not as between US Airways and United on</p> <p>10 this issue, no.</p> <p>11 Q. And how do you understand this notion of</p> <p>12 U.S. Airway pilots being offered Allegheny Mohawk</p> <p>13 came up?</p> <p>14 MR. KATZ: Objection. Lack of</p> <p>15 foundation.</p> <p>16 MR. AMINI: I'm going to object, too.</p> <p>17 Go on.</p> <p>18 A. Could you restate the question again?</p> <p>19 Q. Yeah. You told me you were aware of</p> <p>20 this generally at the time, and I want to know, how</p> <p>21 were you made aware of it?</p> <p>22 A. I -- I don't recollect. I mean, there</p> <p>23 was a -- some deal between United and US Air, and</p> <p>24 there may have been a deal between -- what is the</p> <p>25 date of this? I just don't recollect this in</p>	<p style="text-align: right;">Page 88</p> <p>1 Or the timing of the resolution of the</p> <p>2 grievance?</p> <p>3 A. No.</p> <p>4 Q. Were you aware of the fact that the APA</p> <p>5 filed a grievance as a result of these US Airway</p> <p>6 pilots being offered Allegheny Mohawk?</p> <p>7 A. No.</p> <p>8 Q. All right.</p> <p>9 Do you remember -- going back to this</p> <p>10 TWA MEC meeting where the scope waiver came up.</p> <p>11 Mr. Glanzer, do you remember that you</p> <p>12 weren't the only person advising MEC that day. There</p> <p>13 were other folks there --</p> <p>14 A. That's --</p> <p>15 Q. -- who made presentations.</p> <p>16 A. That's my recollection, yes.</p> <p>17 Q. And do you remember that, at some point</p> <p>18 in the meeting, those -- those presenters or</p> <p>19 advisors, whatever you want to call them, those</p> <p>20 people were asked to vote and give their opinion as</p> <p>21 to whether or not the pilots should waive scope or</p> <p>22 not?</p> <p>23 A. I don't recollect that, no.</p> <p>24 Q. Do you remember a call for a show of</p> <p>25 hands?</p>

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<p>1 A. No.</p> <p>2 Q. Do you remember Roland Wilder dissenting</p> <p>3 and disagreeing --</p> <p>4 MR. PRESS: Roland Wilder. Roland.</p> <p>5 Q. Do you remember him disagreeing with</p> <p>6 your advice, in particular?</p> <p>7 A. I recollect that Roland Wilder, who was</p> <p>8 charged with focusing on, and doing the best that</p> <p>9 the -- the TWA pilots could in a seniority</p> <p>10 integration was -- took a different position and --</p> <p>11 with respect to the waiver issue, yes.</p> <p>12 Q. Okay.</p> <p>13 And do you remember yourself, your -- as</p> <p>14 part of your presentation at MEC, that your -- your</p> <p>15 tone and demeanor was quite forceful. Do you</p> <p>16 remember that?</p> <p>17 A. No, I don't remember that.</p> <p>18 Q. Well, okay. That's not your</p> <p>19 recollection.</p> <p>20 A. I don't have a recollection of my -- I</p> <p>21 don't play videos of myself in my own head about</p> <p>22 meetings eight or nine years ago, no.</p> <p>23 Q. That's fine.</p> <p>24 Do you remember, during a -- a break in</p> <p>25 the proceedings, that the presenters, including</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 I, MARY G. VAN DINA a Certified</p> <p>4 Shorthand Reporter and Notary Public of the State of</p> <p>5 New Jersey, do hereby certify that prior to the</p> <p>6 commencement of the examination, MICHAEL GLANZER was</p> <p>7 duly sworn by me to testify the truth, the whole</p> <p>8 truth and nothing but the truth.</p> <p>9 I DO FURTHER CERTIFY that the foregoing</p> <p>10 is a true and accurate transcript of the testimony as</p> <p>11 taken stenographically by and before me at the time,</p> <p>12 place and on the date hereinbefore set forth.</p> <p>13 I DO FURTHER CERTIFY that I am neither a</p> <p>14 relative nor employee nor attorney nor counsel of any</p> <p>15 of the parties to this action, and that I am neither</p> <p>16 a relative nor employee of such attorney or counsel,</p> <p>17 and that I am not financially interested in the</p> <p>18 action.</p> <p>19</p> <p>20 Notary Public of the State of New Jersey</p> <p>21 My Commission expires August 31, 2010</p> <p>22 License No. XI01903</p> <p>23 Dated: 9/25/08</p> <p>24</p> <p>25</p>
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<p>1 yourself, caucused in a separate room and kind of</p> <p>2 laid it on Roland Wilder pretty good, trying to get</p> <p>3 him to change his vote. Do you remember that?</p> <p>4 A. No.</p> <p>5 Q. Which is to say it might have happened,</p> <p>6 you just don't remember it?</p> <p>7 A. That's correct. It might have happened.</p> <p>8 I just don't remember it.</p> <p>9 MR. PRESS: Okay. Thank you. That's --</p> <p>10 that's all I have.</p> <p>11 MR. KATZ: I have no questions.</p> <p>12 THE VIDEOGRAPHER: This will conclude</p> <p>13 the deposition of Michael Glanzer at approximately</p> <p>14 3:12 p.m.</p> <p>15 Going off the video record.</p> <p>16 (Testimony concluded.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 JURAT</p> <p>2 I, MICHAEL GLANZER, do hereby certify</p> <p>3 that I have read the foregoing transcript of my</p> <p>4 testimony taken on September 18, 2008, and have</p> <p>5 signed it subject to the following changes:</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 WITNESS NAME _____</p> <p>21 DATE _____</p> <p>22 Sworn and subscribed to before me this</p> <p>23 _____ day of _____, 2008.</p> <p>24</p> <p>25 NOTARY PUBLIC _____</p>

In The Matter Of:

*Bensel v.
Air Line Pilots Association*

STEVE TUMBLIN

Vol. 1

September 22, 2008

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<p style="text-align: right;">Page 81</p> <p>1 Q. Okay.</p> <p>2 A. Or what qualifications they may have put</p> <p>3 on their advice.</p> <p>4 Q. And maybe a better question is can you</p> <p>5 testify as to what advice was generally given to the</p> <p>6 MEC before April 2, 2001?</p> <p>7 MR. CONNELL: Objection to the form.</p> <p>8 THE WITNESS: Generally given. I think</p> <p>9 the advice that was generally given was that there</p> <p>10 were -- there was a significant risk if they did not</p> <p>11 waive their scope, or whatever else the American had</p> <p>12 asked them with respect to the integration. That</p> <p>13 there was a possibility that American could withdraw</p> <p>14 from the transaction and that some -- some of those</p> <p>15 people believed there was a likelihood that American</p> <p>16 withdraw from the transaction.</p> <p>17 And I can't -- I cannot specifically say</p> <p>18 this person said this and this person said this. Just</p> <p>19 my general sense that -- that from all the advisors</p> <p>20 who made presentations with respect to, I don't know</p> <p>21 if it was that meeting or prior meetings, that it was</p> <p>22 a difficult issue, integration was a difficult issue,</p> <p>23 there were other difficult issues to deal with, and</p> <p>24 that they received -- the MEC received probably, if I</p> <p>25 had to put a number on it, at least the majority of</p>	<p style="text-align: right;">Page 83</p> <p>1 tell you.</p> <p>2 Q. BY MR. PRESS: Sure. Bob Christy, Clay</p> <p>3 Warner, Randy Babbitt, Michael Glanzer, Richard</p> <p>4 Seltzer, yourself, Bill Roberts, and Rolland Wilder?</p> <p>5 A. Yeah, I think you're right.</p> <p>6 Q. That's eight.</p> <p>7 A. Yeah, I wouldn't have remembered some of</p> <p>8 those if you hadn't said them, but I think that's</p> <p>9 right. I mean, I think they were all there.</p> <p>10 Q. That's the meeting you're referring to?</p> <p>11 A. Yeah, that's the meeting I'm referring</p> <p>12 to.</p> <p>13 Q. Okay. Did you make a presentation that</p> <p>14 day?</p> <p>15 A. I'm sure I did.</p> <p>16 Q. Do you remember what advice, if any, you</p> <p>17 gave?</p> <p>18 A. I don't recall specifically what advice</p> <p>19 we were -- we gave. Based on my recollection of my</p> <p>20 feelings with respect to the transaction at the time I</p> <p>21 think what advice we probably gave was that it -- that</p> <p>22 after listening to the financial advisor's analysis,</p> <p>23 after listening to the analysis of those who were</p> <p>24 strictly labor counsel and merger counsel, and</p> <p>25 examining the bankruptcy options, and based on the</p>
<p style="text-align: right;">Page 82</p> <p>1 advisors said there was a very significant risk of a</p> <p>2 liquidation if American were to pull out of the</p> <p>3 transaction.</p> <p>4 Q. BY MR. PRESS: What you've just recounted</p> <p>5 for us, is that your memory of what was said by -- by</p> <p>6 folks at the April 2nd meeting?</p> <p>7 A. I don't remember which meeting it was at.</p> <p>8 I remember we met and we had the MEC, you know,</p> <p>9 basically asked all of the advisors who were present</p> <p>10 just to, you know, sort of lay out what they thought</p> <p>11 the options were and give us their, you know, to give</p> <p>12 their advice on what they thought the possibilities</p> <p>13 were, what the risks were of various transactions and,</p> <p>14 you know, give the MEC all the options so that the MEC</p> <p>15 could make an informed decision in the -- in the best</p> <p>16 interest of the TWA pilots.</p> <p>17 Q. And that -- the meeting you're referring</p> <p>18 to, was that in St. Louis?</p> <p>19 A. I don't recall where it was.</p> <p>20 Q. Do you remember, are you referring to a</p> <p>21 meeting where I think eight advisors came, including</p> <p>22 yourself?</p> <p>23 A. If you named them I --</p> <p>24 MR. CONNELL: Objection as to form.</p> <p>25 THE WITNESS: If you named them I could</p>	<p style="text-align: right;">Page 84</p> <p>1 feedback that, as I said, not directly but we were --</p> <p>2 I was -- was coming back to me what I understood</p> <p>3 American's -- the likelihood that they would move away</p> <p>4 from -- from what they had required, that I think I</p> <p>5 advised them that there was a very high risk in -- in</p> <p>6 pursuing a strategy to try to go on the standalone</p> <p>7 basis. To try to upset the American deal either --</p> <p>8 either in the effort to do a standalone with some</p> <p>9 other -- do a deal with some other entity or try to</p> <p>10 renegotiate with American, those were basically, I</p> <p>11 think, probably the three possibilities.</p> <p>12 Q. And that's what you can recall the advice</p> <p>13 you gave?</p> <p>14 A. That's what I can recall the advice I</p> <p>15 gave, although I don't specifically say -- remember</p> <p>16 what I said.</p> <p>17 Q. Were you involved in the drafting of --</p> <p>18 well, let me back up and lay some foundation.</p> <p>19 TWA filed its motion under Section 1113</p> <p>20 on February 5th -- not February -- March 15th, okay?</p> <p>21 And do you recall that an objection to that motion was</p> <p>22 filed by ALPA?</p> <p>23 A. I don't recall whether -- right now</p> <p>24 whether -- do you have ...</p> <p>25 Q. I do have the brief with me, and my</p>

EXHIBIT B

TRUJILLO RODRIGUEZ & RICHARDS, LLC

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY <i>et al.</i> ,	:	
	:	Civil Action No. 02-2917 (JEI)
Plaintiffs,	:	
	:	
v.	:	
	:	
AIR LINE PILOTS ASSOCIATION,	:	
	:	
Defendant.	:	

CERTIFICATION OF SERVICE

I hereby certify that a copy of Plaintiffs' Notice of Motion for Sanctions Pursuant to Rule 11, Brief in Support, Proposed Order and Declaration of Nicole M. Acchione has been served on Defense Counsel.

VIA HAND DELIVERY:

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Washington, D.C. 20016

Dated: August 16, 2011

By: s/ Lisa J. Rodriguez
Lisa J. Rodriguez